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10/577,051

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EXAMINER

SHEARER, DANIEL R

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,051	Applicant(s) LECOUTRE ET AL.	
	Examiner DANIEL R. SHEARER	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 19 recites the limitation "the tear-away portion" in line 3 of the claim.

There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-9, 11, 12, 16-18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,998,621 to Meehan.

Meehan shows a fluid dispenser assembly (Fig. 6), comprising a fluid dispenser (E) and a pack (63) for co-operating with the dispenser in such a manner as to fasten the pack to the dispenser (Fig. 6), the pack including a fastener zone (surrounding 64) and the dispenser including reception means (formed by flaps pointed to by leaders for element 86 in Fig. 7) for receiving the fastener zone. The reception means comprise at

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least one set of two opposite longitudinal grooves (formed by flaps pointed to by leaders for element 86 in Fig. 7) for receiving the fastener zone of the pack. The longitudinal grooves face away from each other in opposite directions and extend in a direction that is substantially parallel with a direction of actuation of the fluid dispenser (direction of actuation is from 69 to 84 in Fig. 6).

Regarding claims 2 and 3, Meehan shows that the reception means and the fastener zone extend in a fastener plane and that the dispenser presents a longitudinal axis that extends in the fastener plane (Figs. 6 and 7).

Regarding claims 5, 6 and 8, Meehan shows that the pack includes a housing that is plane and thin (Fig. 7) and defines plane edges (edges of 64) forming the fastener zone. The fastener zone comprises two facing zone portions defining between them a housing gap (64) for co-operating with the reception means (Fig. 7).

Regarding claim 7, Meehan shows that the pack forms a closed housing that is in the form of a cut-out (64) within the pack with the dispenser being completely surrounded by the pack (Fig. 6).

Regarding claims 9 and 11, Meehan shows that the dispenser includes a reservoir (70) forming a body with a bottom (69), an opening (84) and side walls (67, 68) that form the reception means in the form of two opposite longitudinal grooves that extend over at least a fraction of the height of the walls between the bottom and the opening (Fig. 7).

Regarding claim 12, Meehan shows that each groove comprises two substantially opposite longitudinal walls (formed by flaps pointed to by leaders for

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element 86 in Fig. 7) extending in the fastener plane that are interconnected by a bottom core (71).

Regarding claim 16, Meehan further shows a card (63) comprising a plurality of edges (edges of 64) configured to be inserted into a respective one of the plurality of longitudinal grooves (Fig. 7) to attach the card to the fluid dispenser (Fig. 6).

Regarding claim 17, Meehan shows that the plurality of longitudinal grooves comprise two longitudinal grooves formed on opposite sides of a reservoir (Figs. 6 and 7).

Regarding claims 18 and 21, Meehan shows that the card comprises a tear away portion (portion above leader for 74 in Fig. 9) that extends to an end of the fluid dispenser that is opposite an end of the fluid dispenser that contains the longitudinal groove (Fig. 9) and that when torn away allows actuation of the fluid dispenser (dispenser cannot be actuated until removed from pack, Col. 8, ll. 32-54).

Regarding claim 20, Meehan shows that the card extends completely around the fluid dispenser such that the card prevents actuation of the fluid dispenser (dispenser cannot be actuated until removed from pack, Col. 8, ll. 32-54).

6. Claims 1-4, 7, 9-12 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,942,667 to Thomas.

Thomas shows a fluid dispenser assembly (Fig. 1), comprising a fluid dispenser (10) and a pack (16, 18) for co-operating with the dispenser in such a manner as to fasten the pack to the dispenser (Fig. 2), the pack including a fastener zone (Figs. 3 and

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4, ribs formed at 26 and 30) and the dispenser including reception means (Figs. 3 and 4, grooves formed at 26 and 30) for receiving the fastener zone. The reception means comprise at least one set of two opposite longitudinal grooves (26) for receiving the fastener zone of the pack. The longitudinal grooves face away from each other in opposite directions and extend in a direction that is substantially parallel with a direction of actuation of the fluid dispenser (Figs. 1 and 4).

Regarding claims 2 and 3, Thomas shows that the reception means and the fastener zone extend in a fastener plane and that the dispenser presents a longitudinal axis that extends in the fastener plane (Figs. 2 and 4).

Regarding claim 4, Thomas shows that the dispenser presents a generally cylindrical shape defining a longitudinal axis that extends in the fastener plane (Fig. 1).

Regarding claim 7, Thomas shows that the pack forms a closed housing that is in the form of a cut-out (32, 36) within the pack with the dispenser being completely surrounded by the pack (Fig. 2).

Regarding claims 9 and 11, Thomas shows that the dispenser includes a reservoir (12) forming a body with a bottom (bottom of 12 in Fig. 1), an opening (within 22) and side walls (20) that form the reception means (26) in the form of two opposite longitudinal grooves that extend over at least a fraction of the height of the walls between the bottom and the opening (Fig. 1).

Regarding claim 10, Thomas shows that the dispenser includes a removable protective cap (14) that forms the reception means (grooves 30 as shown in Fig. 3).

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Regarding claim 12, Thomas shows that each groove comprises two substantially opposite longitudinal walls (28) extending in the fastener plane that are interconnected by a bottom core (26).

Regarding claim 15, Thomas discloses that the pack is engaged into the grooves of the dispenser by sliding (Fig. 1).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3, 5-7, 9, 11, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,371,087 to Saujet.

Saujet shows a fluid dispenser assembly (Fig. 1), comprising a fluid dispenser (1), and a pack (2) for co-operating with the dispenser in such a manner as to fasten the pack to the dispenser, the dispenser including a fastener zone (16) and the pack including reception means (12, 13, 14) for receiving the fastener zone. Saujet shows that the reception means comprise one set of two opposite longitudinal grooves (see Fig. 10) that extend in a direction that is substantially parallel with the direction of actuation of the fluid dispenser (Fig. 3). Saujet fails to show that the reception means are located on the dispenser and the fastener zone is located on the pack. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed grooves on the dispenser and the ribs on the pack and since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Further, in the above modification, the longitudinal grooves would inherently face away from each other in opposite directions as shown by the positions of the ribs in Figure 10.

Regarding claims 2 and 3, Saujet shows that the reception means and the fastener zone extend in a fastener plane and that the dispenser presents a longitudinal axis that extends in the fastener plane (Figs. 10).

Regarding claim 7, Saujet shows that the pack forms a closed housing that is in the form of a cut-out (within 3 and 4 in Fig. 2) within the pack with the dispenser being completely surrounded by the pack (Fig. 1).

Regarding claims 9 and 11, Saujet shows that the dispenser includes a reservoir (1) forming a body with a bottom (6), an opening (top of 1 in Fig. 2) and side walls (15)

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that form the reception means (12, 13, 14) in the form of two opposite longitudinal grooves that extend over at least a fraction of the height of the walls between the bottom and the opening (Fig. 3).

Regarding claim 12, Saujet shows that each groove comprises two substantially opposite longitudinal walls (12, 13) extending in the fastener plane that are interconnected by a bottom core (14).

Regarding claims 13 and 14, Saujet shows that each groove defines a longitudinal fastener wall (12, 13) that extends substantially in the fastener plane, and an access wall (14) that extends substantially perpendicularly to the fastener plane (Fig. 10).

Regarding claim 15, Saujet discloses that the pack is engaged into the grooves of the dispenser by sliding (grooves 16 slide past 12, 13 to move from position in Fig. 9 to position in Fig. 10).

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meehan in view of U.S. Patent No. 6,811,057 to Duquet et al. (Duquet).

Meehan shows all aspects of the applicant's invention as set forth in claim 16, but fails to show a removable cap that covers an orifice attached to the tear away portion. Duquet shows a fluid dispensing assembly (Fig. 1) with a dispenser (1) and a card (2) that includes a tear away portion (240) attached to a removable cap that selectively covers an orifice (17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the fluid

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dispenser of Meehan with the removable cap attached to the tear away portion of Duquet to protect the contents between uses by selectively covering the orifice with the cap.

Response to Arguments

11. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is (571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754